

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-150/2013 in
OA-3640/2012**

Reserved on : 18.05.2016.

Pronounced on : 24.05.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Union of India & Others : through

1. The General Manager,
North Central Railway,
Allahabad.
2. The Dy. Chief Engineer (TMC),
HQ Office, North Central Railway,
Subedar Ganj,
Allahabad (UP).

.... Review Applicants

(through Sh. VSR Krishna and Sh. Shailendra Tiwari, Advocates)
Versus

Shri Anup Kumar,
S/o Sh. Radha Kishore,
Ex. Telephone Attendant/DAK,
Khalasi (Bungalor Khallasi),
R/o 1167, Muhalla Imli,
Sri Radha Kishan Mandir,
Sunaron Wali Dharamshala,
Delhi.

..... Respondent

(through Mrs. Meenu Mainee, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The O.A. respondents have filed this review application seeking review of our order dated 19.07.2013. The OA applicant has opposed the review stating

that the review applicants were only utilising the review application for re-arguing the matter. They have relied on the following judgments:-

- (i) Chander Kanta Vs. Sheikh Habib, SLR 1975(3) 933.
- (ii) Northern India Careers Vs. Lt. Governor, 1986(2)SCC 167.
- (iii) Persona Devi Vs. Sumitar Devi, JT 1997(8) 482.

to say that review is not maintainable on these grounds.

2. We have heard both sides and have perused the material on record.
3. Learned counsel for the review applicants have drawn our attention to para-14 of the order in question. The aforesaid para reads as under:-

"Now on the merit of the case. Admittedly, the Applicant is a TADK who attained temporary status w.e.f. 26.10.2011. Therefore, the Respondents are duty bound to hold an enquiry against him in accordance with the existing rules and instructions as applicable to employees with temporary status before his service was terminated. In terms of Railway Boards letter No.803E/1/Pt.X.B-4 issued in January, 1995, persons who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules. Admittedly, the Respondents, vide their impugned order dated 23.7.2012, terminated the service of the Applicant without following the aforesaid Rules. Therefore, not only the said but the 2nd impugned order dated 30.07.2012 directing the Applicant to surrender the Railway Pass issued to him cannot be sustained."

4. Learned counsel argued that this Tribunal had come to the conclusion that the applicant had attained temporary status after completion of 120 days of service and as a consequence of that had come within the purview of the Discipline & Appeal Rules. Consequently, he could not have been terminated without following the procedure prescribed in the aforesaid rules. However, learned counsel stated that a Full Bench of this Tribunal in the case of **Shyam Sunder Vs. UOI** (OA-896/1995) while considering the aforesaid issue had come to the following conclusion:-

"(ii) This question also does not arise for similar reasons given in paragraph 3 of this order.

(iii)(a) No. As a general principle, it cannot be laid down that after putting in 120 days continuous service, a Bungalow Peon/Khallasi acquires temporary status. He acquires temporary status on completion of

such a period of continuous service as may be prescribed by the General Manager of the Railway under which he works and which is current on the date of his employment as a Bungalow Peon/Khallasi. In the absence of any such rule or instructions from the General Manager, the general instructions or rule in that regard, like one given under paragraph 1515 of the Manual, issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status, as discussed in paragraph 10 and 11 of this order.

Yes. After acquisition of temporary status by a Bungalow Peon/Khallasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry as discussed in paragraphs 14, 15 and 16 of this order.

- (iv) No. The termination of the service of a substitute Bungalow Peon/Khallasi, who has acquitted temporary status, is not bad or illegal for want of notice before termination. In such a case, he may be entitled to pay for the period of notice in lieu of notice, as discussed in paragraph 17 of this order. The question whether for want of retrenchment compensation under section 25-F of the Industrial Disputes Act, 1947, the termination of the service of a substitute Bungalow Peon/Khallasi, who has, acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal, as discussed in paragraph 19 and 20 of this order."

5. Learned counsel for the review applicants argued that this judgment of Full Bench could not be brought to the notice of the Tribunal at the time of hearing of the O.A. and consequently Tribunal has come to an erroneous conclusion against the findings of the Full Bench. Thus, an error has crept into the judgment, which needs to be corrected.

6. We have considered the aforesaid submission. In our view, there is considerable merit in the submission of the learned counsel for review applicants. In fact, this Tribunal in the first para of the judgment itself has noted as follows:-

The applicant's grievance in this Original Application is that Respondent No.2, namely, the Deputy Chief Engineer (TMC), HQ Office, North Central Railway, Subedar Ganj, Allahabad discharged him from services in an arbitrary and illegal manner, vide Annexure A-1 letter dated 23.07.2012 while he was working as a Bungalow Khalasi with temporary status when the Railway Board, vide its letter issued in January 1995, had already prescribed the following specific procedure for such discharge:-

“ii. Persons who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules. The grant of Ty. Status to Bungalow peons before 2 years service will create problems for the officer in case Bungalow Peon indulge in unwarranted activities. No officer will allow his family members to be dragged, in official D&A enquiring etc. Thus, condition of two years service for grant of ty. Status to Bungalow Khallasi is a must.

iii. The above conditions are not included in the IREC or IREM as Bungalow Peons is a special category as they are neither casual labour nor substitute. Their service conditions, until they attain Ty. Status after completion of two years continuous service, are governed by the administrative orders issued from time to time with the approval of competent authority on Zonal Railways.”
(underlining supplied)”

7. We, therefore, allow this review application and recall our order dated 19.07.2013 in OA-3640/2012. The O.A. is restored to its original number. Let it be listed on 12.07.2016.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/